IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1589 OF 2005.

Office Notes, Office Memorandum of Coram, appearnaces, Court's Orders or directions and Registrar's orders	Court's or Judge's Orders

Mr. Avinash Avhad, for Appellant.
Mrs. Poonam Bhosale, for
Respondent No.1.

CORAM : A.S. OKA, J.
DATE : 14TH AUGUST 2006.

P.C. :

1. Heard learned Counsel for the Plaintiff – Appellant.

2. The submission of the learned Counsel appearing for the Plaintiff – Appellant is that on reading of the document dated 1st September 1997, it is clear that it was a mortgage by conditional sale which is governed by Section 58 (c) of the Transfer of Property Act, 1882. The Appellate Court has rejected the said contention and has held that the transfer was in the nature of sale.

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3. After perusing the plaint, it is crystal clear that there are no averments made in the plaint as regard existence of a mortgage transaction. The entire emphasis in the plaint is on execution reconveyance and possession.

4. There is no specific prayer for redemption of mortgage. In view of the nature of the averments made in the plaint, I find no infirmity in the approach in both the Courts below. No substnatial question arises. Second Appeal is dismissed.

JUDGE